

ESTTA Tracking number: **ESTTA46930**

Filing date: **09/30/2005**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

### **Petition for Cancellation**

Notice is hereby given that the following party requests to cancel indicated registration.

#### **Petitioner Information**

<b>Name</b>	Bass Pro Trademarks, L.L.C.		
<b>Entity</b>	Limited Liability Company	<b>Citizenship</b>	Missouri
<b>Address</b>	2500 East Kearney Springfield, MO 65898 UNITED STATES		

<b>Attorney information</b>	Dennis J.M. Donahue III Husch & Eppenberger, LLC 190 Carondelet Plaza Suite 600 St. Louis, MO 63105 UNITED STATES trademark@husch.com Phone: 314.480.1500
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#### **Registration Subject to Cancellation**

<b>Registration No</b>	2390988	<b>Registration date</b>	10/03/2000
<b>Registrant</b>	SPORTSMAN'S WAREHOUSE, INC. 7035 HIGH TECH DRIVE MIDVALE, UT 84047 UNITED STATES		
<b>Goods/Services Subject to Cancellation</b>	Class 035. First Use: 19950616, First Use In Commerce: 19950616 Goods/Services: Retail and wholesale stores featuring hunting supplies, fishing supplies, camping supplies, reloading supplies, outerwear clothing and footwear		

<b>Attachments</b>	PetitionToCancel2164.tif ( 1 page ) PetitionToCancel2165.tif ( 1 page ) PetitionToCancel2166.tif ( 1 page ) PetitionToCancel2167.tif ( 1 page ) CertCopyofRegNo2017417168.tif ( 1 page ) CertCopyofRegNo2017417169.tif ( 1 page ) Copy of CertCopyofRegNo2017417168.tif ( 1 page ) Copy of CertCopyofRegNo2017417169.tif ( 1 page )
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<b>Signature</b>	/Dennis J.M. Donahue III/
<b>Name</b>	Dennis J.M. Donahue III
<b>Date</b>	09/30/2005

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the matter of trademark Registration No. 2,390,988

For the mark SPORTSMAN'S WAREHOUSE HUNTING FISHING CAMPING RELOADING  
OUTERWEAR FOOTWEAR and Design

Date registered: October 3, 2000

Bass Pro Trademarks, L.L.C

v.

Sportsman's Warehouse, Inc.

PETITION TO CANCEL

Petitioner is BASS PRO TRADEMARKS, L.L.C., a Limited Liability Company organized and existing under the laws of Missouri, located and doing business at 2500 E. Kearney, Springfield, Missouri 65898.

To the best of petitioner's knowledge, the name and address of the current owner of the registration are as follows: Sportsman's Warehouse, Inc. (Utah Corporation), 7035 High Tech Drive, Midvale, Utah 84047.

The above-identified petitioner believes that it will be damaged by the above-identified registration, and hereby petitions to cancel the same.

The grounds for cancellation are as follows:

1. Petitioner is the owner of U.S. Trademark Registration No. 2071417 for the mark BASS PRO SHOPS SPORTSMAN'S WAREHOUSE and Design which was registered on the Principal Register on June 17, 1997. Said registration was based on an application filed in the

U.S. Patent Office on March 1, 1996, which is a date prior to the date of filing of respondent's application. Said registered mark of petitioner is valid and subsisting and is prima facie evidence of petitioner's exclusive right to use said mark in commerce on the services specified in said registration, namely "retail stores featuring clothing, fishing supplies and sporting goods." In view of the similarity of the respective marks and the related nature of the services of the respective parties, it is alleged that respondent's registered mark so resembles petitioner's registered mark, as to be likely to cause confusion, or to cause mistake, or to deceive.

2. Respondent's registered mark, when used in connection with the services of respondent, is comprised of a background design and terms that are merely descriptive of the services being provided and that are insufficiently stylized to be inherently distinctive to consumers in the markets served by respondent.

3. Respondent's registered mark, when used in connection with the services of respondent, is comprised of a common background design and terms that are merely descriptive of the services being provided and that are stylized in a common format (western/frontier) that fails to create a separate and distinct impression necessary for a mark in the markets served by respondent.

4. Since at least as early as January 2, 1995, Petitioner has been using the mark SPORTSMAN'S WAREHOUSE in connection with retail store services. Said use has been valid and continuous since said date of first use and has not been abandoned. Said use was begun on a date prior to the date of filing of respondent's application. Said mark of Petitioner is symbolic of extensive good will and consumer recognition built up by Petitioner through

substantial amounts of time and effort in advertising and promotion. In view of the similarity of the respective marks and the related nature of the services of the respective parties, it is alleged that respondent's registered mark so resembles Petitioner's mark previously used in the United States, and not abandoned, as to be likely to cause confusion, or to cause mistake or to deceive.

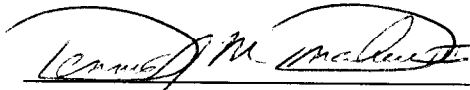
5. Since at least as early as January 2, 1995, Petitioner has been using the mark SPORTSMAN'S WAREHOUSE in connection with retail store services. Said use has been valid and continuous since said date of first use and has not been abandoned. Said use was begun on a date prior to the actual date of first use of the respondent's registered mark and prior to the respondent's claimed date of first use. (Upon information and belief, Petitioner further alleges that respondent's actual date of first use of the registered mark was after the date set forth in the application.) Said mark of Petitioner is symbolic of extensive good will and consumer recognition built up by Petitioner through substantial amounts of time and effort in advertising and promotion. In view of the similarity of the respective marks and the related nature of the services of the respective parties, it is alleged that respondent's registered mark so resembles Petitioner's mark previously used in the United States, and not abandoned, as to be likely to cause confusion, or to cause mistake or to deceive.

WHEREFORE, Petitioner prays that Registration No. 2,390,988 be cancelled and that this Petition for Cancellation be sustained in favor of Petitioner.

Petitioner hereby appoints Dennis J.M. Donahue III, Michael D. Bokermann, Rebecca J. Brandau, Dutro E. Campbell II, David A. Chambers, Robert C. Haldiman, Grant D. Kang, Ryan Mitchem, Harry B. Ray, H. Frederick Rusche, and Gregory E. Upchurch of the firm Husch &

Eppenberger, LLC, to act as attorneys for Petitioner herein, with full power to prosecute said  
Petition and to transact all relevant business with the U.S. Patent and Trademark Office and the  
United States Courts. **Dennis J.M. Donahue III** is hereby authorized to receive all official  
communications in connection with this Petition for Cancellation.

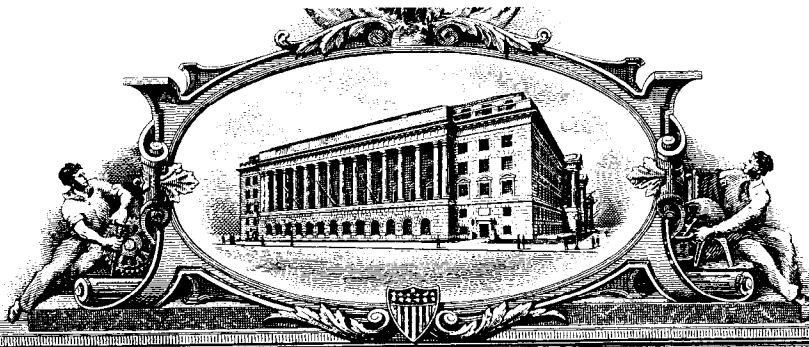
Respectfully submitted, this 30<sup>th</sup> day of September, 2005.



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Fax 314-290-5342  
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774286



# THE UNITED STATES OF AMERICA

**TO ALL TO WHOM THESE PRESENTS SHALL COME:**

**UNITED STATES DEPARTMENT OF COMMERCE**

**United States Patent and Trademark Office**

**July 20, 2005**

**THE ATTACHED U.S. TRADEMARK REGISTRATION 2,071,417 IS  
CERTIFIED TO BE A TRUE COPY WHICH IS IN FULL FORCE AND  
EFFECT WITH NOTATIONS OF ALL STATUTORY ACTIONS TAKEN  
THEREON AS DISCLOSED BY THE RECORDS OF THE UNITED STATES  
PATENT AND TRADEMARK OFFICE.**

**REGISTERED FOR A TERM OF 10 YEARS FROM *June 17, 1997***

**SECTION 8 & 15**

**SAID RECORDS SHOW TITLE TO BE IN:**

***BASS PRO TRADEMARKS, L.L.C.***

***A LIMITED LIABILITY COMPANY OF MISSOURI***

**By Authority of the**

**Under Secretary of Commerce for Intellectual Property  
and Director of the United States Patent and Trademark Office**



**P. SWAIN**

**Certifying Officer**

Int. Cl.: 42

Prior U.S. Cls.: 100 and 101

Reg. No. 2,071,417

**United States Patent and Trademark Office**

Registered June 17, 1997

**SERVICE MARK  
PRINCIPAL REGISTER**



**Sportsman's Warehouse**

BASS PRO TRADEMARKS, L.P. (MISSOURI  
LIMITED PARTNERSHIP)  
1935 SOUTH CAMPBELL  
SPRINGFIELD, MO 65898

FOR: RETAIL STORES FEATURING CLOTH-  
ING, FISHING SUPPLIES AND SPORTING  
GOODS, IN CLASS 42 (U.S. CLS. 100 AND 101).  
FIRST USE 1-2-1995; IN COMMERCE  
1-2-1995.

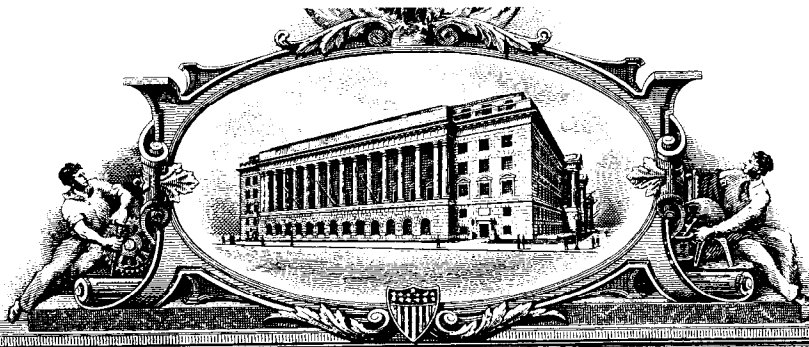
NO CLAIM IS MADE TO THE EXCLUSIVE  
RIGHT TO USE "SPORTSMAN'S WARE-  
HOUSE", APART FROM THE MARK AS  
SHOWN.

SER. NO. 75-066,261, FILED 3-1-1996.

PAULA MAYS, EXAMINING ATTORNEY



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